138 Procès no B

OPINIONS

OF

THE LATE CHIEF JUSTICE, THE HONORABLE SIR L. H. LAFONTAINE, BART.; THE LATE HONORABLE F. A. QUESNEL, Q.C., AND THE LATE HONORABLE ALEXANDER BUCHANAN, Q.C.,

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REGARDING

THE RIGHTS OF THE PUBLIC

TO

THE BEACH OF THE RIVER ROUND THE ISLAND OF MONTREAL AND OTHER IMPORTANT MATTERS

IN CONNECTION WITH THE

PORT AND HARBOUR OF MONTREAL

PUBLISHED BY ORDER OF THE HARBOUR COMMISSIONERS.

MONTREAL:
GAZETTE PRINTING HOUSE, NEAR THE POST OFFICE.
1871.

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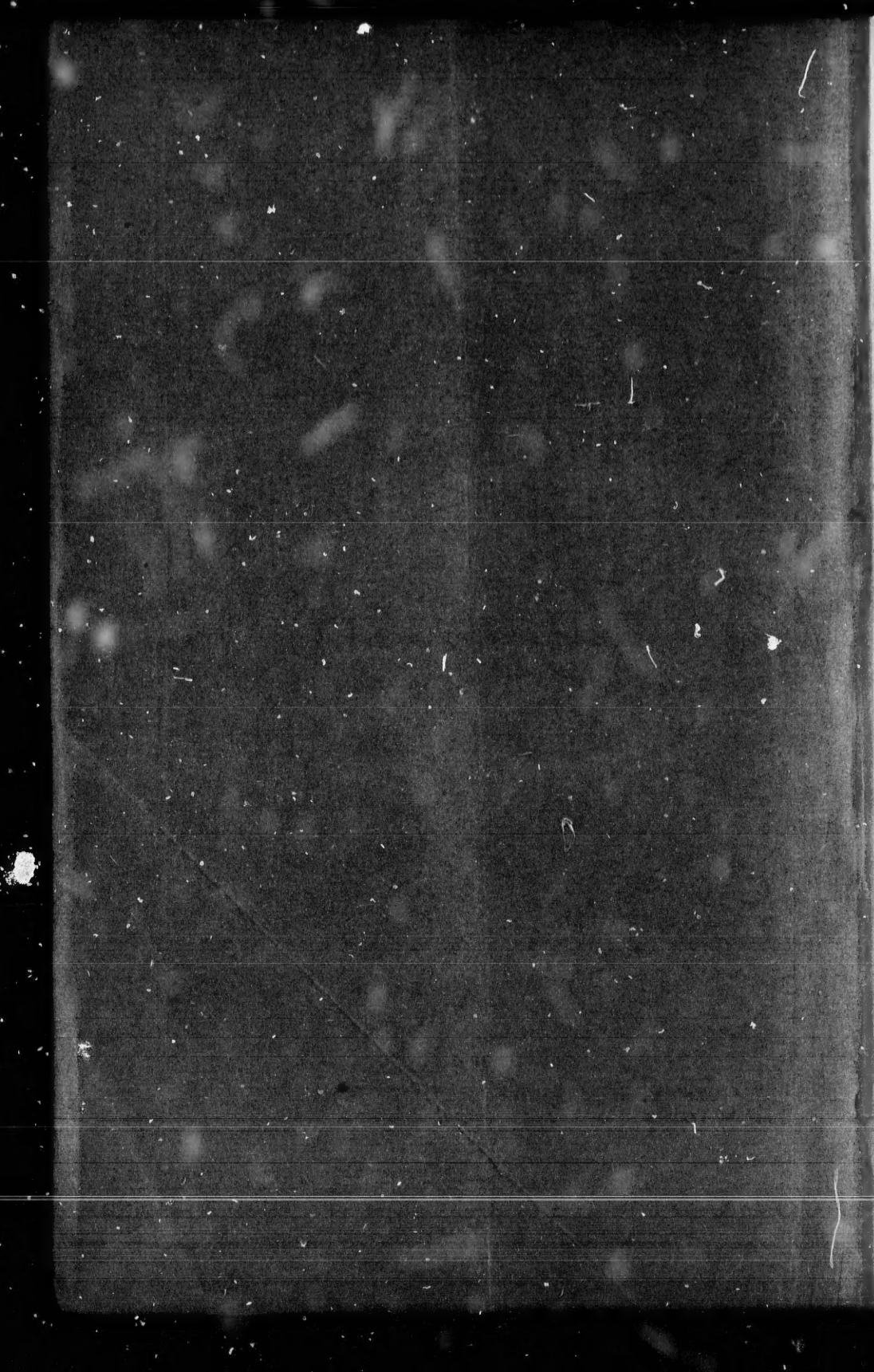

138 Rocès no 3

OPINIONS

OF

THE LATE CHIEF JUSTICE, THE HONORABLE SIR L. H. LAFONTAINE, BART.; THE LATE HONORABLE F. A. QUESNEL, Q.C., AND THE LATE HONORABLE ALEXANDER BUCHANAN, Q.C.,

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OPINIONS

REGARDING

THE PORT AND HARBOUR OF MONTREAL.

28*th Geo. III.* (1788), *Chap.* 5.

"An Ordinance for regulating the Pilotage in "the River Saint Lawrence, and for prevent- "ing abuses in the Port of Quebec."

Repealed by Act of 1805, chap. 12, Sec. 29.

I. This is the first Act to be found in our printed Statutes, in which mention is made of a *Port*. It refers only to the "Port of Quebec." It will be observed that the word "Port" is used as well in the English as in the French title of the Ordinance. It is not to be found in any other part of the English version. But we find the word "Harbour" in the 17th, 18th and 19th Sections; whilst in the corresponding French Sections the word *Port* is used, and not the word "*Hâvre*."

II. The second Act is the Ordinance passed in 1790, 30th Geo. III., chap. 1, to amend the above cited Ordinance of 1788.

Repealed by Act of 1805, chap. 12.

We read the words "Port of Quebec" and "Captain of the Port" in the 5th Section, and "Captain of the Port" and "Ports of Quebec and Montreal" in the 7th Section, although there were no Ports at that time, or at least no Ports the limits of which had been legally defined. This remark applies more particularly to Montreal, the Port of that name

having only been established for the first time by the Act of 1832. 2nd Will. IV., chap. 24, hereinafter mentioned.

Repealed by Act of 1805, chap. 12.

III. In the year 1797 an Act was passed (37th Geo. III., chap. 4) to amend the two foregoing Ordinances.

In reference to the Port of Quebec, the words "Bason" and "Port" are used as synonymous: "Bason or Port of Quebec," in the first and second sections.

Repealed by Act of 1849, chap. 114.

IV. In the year 1805 there was passed an Act intituled: "An Act for the better regulation of Pilots and Shipping in the *Port of Quebec* and in *the Harbours of Quebec* and *Montreal*, and for improving the navigation of the River Saint Lawrence, and for establishing a Fund for decayed Pilots, their widows and children;" (45th Geo. III., chap. 12).

1. By the 29th Section, the above cited Ordinances and Acts of 1788, 1790 and 1797 are repealed.

2. This is the first Act which appears to have defined what was to be considered *the Port of Quebec* "for the *purposes* of this Act," as well as *the Harbour of Quebec* and *the Harbour of Montreal, for the said purposes;*" (see the 6th section) as follows:

"The Port of Quebec shall be held and deemed to com-
"prehend all that part of the River Saint Lawrence between
"the Island of Bic, and the anchorage thereof inclusive, up
"to the Point of Saint Anne's, above the City of Montreal.

"The Harbour of Quebec shall comprehend that part of
"the River from Saint Patrick's Hole to the River of Cape
"Rouge, both inclusive.

"The Harbour of Montreal shall comprehend that part of
"the said River from the Bay below the current of Saint
"Mary's, inclusive, up to the said Point of Saint Anne's."

3. The same Section (6th) provides for the appointment of two classes of Branch Pilots, one "for and below the Harbour of Quebec," and the other "for and above the said harbour."

4. In the Act of 1805, the word "Hâvre" in the French

version, seems to be always rendered in the English by the word "Harbour;" and the words "Bason or Harbour of Quebec" are often used in that Act as having but one and the same meaning, so are the words "Captain of the Port of Quebec," or "Harbour Master of Quebec." The latter word seems to designate one and the same officer; but, by the 22nd Section, it is enacted that "The Captain of the "Port of Quebec shall, from henceforth, be called the "Harbour Master of Quebec;" and in the same section are to be found the words "The *beach* of the said Harbour."

5. The first section provides for the establishment of "The Trinity House of Quebec," to be composed of a Master, a Deputy Master, "to reside in the City of Quebec," and of a certain number of Wardens, not to exceed seven, (of whom the Captain of the Port of Quebec or Harbour Master of Quebec, and the Superintendent of Pilots, or their successors, are to be two); four of the Wardens to reside in the City of Quebec, and three in the City of Montreal.

6. By the same section (the 1st) the Master, Deputy Master and Wardens, and their successors, are declared to be a body corporate and politic, in name and in deed, by the name of the Master, Deputy Master and Wardens of the Trinity House of Quebec, and to have perpetual succession and a common seal, and by the same name they may sue and be sued, imp[illegible]e impleaded, answer and be answered, and are cap[illegible] to purchase, have, hold, receive, enjoy, poss[illegible]n immoveable estates, for the purpose of erecti[illegible]use or light houses, and beacon or beacons, and movea[illegible]erty, for otherwise improving the navigation and Pilotage of the River Saint Lawrence.

V. In the order of dates, is to be mentioned the Act of 1807, 47th Geo. 3, chap. 10, amending the Act of 1805. It makes use of the words "Port of Quebec" and "Harbour Master of Quebec" and mentions "The naval officer of the Port of Quebec," as being an office already in existence.

Repealed by Act of 1849, chap. 114.

"Naval Officer of the Port of Quebec."

ALSO.

Repealed by Act of 1849, chap. 114.

VI. The Act of 1811, 51st Geo. III, chap. 12, in which (Sections 11th and 13th) mention is made of "the Harbour of the Cul de Sac," in the Lower Town of Quebec, the property of which harbour is, by section 11th, vested in the Corporation of the Trinity House of Quebec.

1. It is to be remarked that, in the 10th section, by which certain rates of pilotage between Quebec and Montreal are allowed, mention is twice made of "the Port of Montreal." It is evidently an error; for, since the passing of the Act of 1805 by which the Port of Quebec is legally established and its limits defined as above stated, no Port of Montreal, so named, had yet been created by law. By these words "Port of Montreal" in the 10th section, was meant, there seems to be no doubt, the "Harbour" of Montreal, which, according to its limits as settled by the Act of 1805, then extended from the Point of Saint Anne's, above the City of Montreal, to the Bay below the Current of St. Mary's. The words of the Act are: "From the *Harbour* of Quebec "to the *Port* of Montreal, and to the opposite side of the "River St. Lawrence, or any other place above the Town "of Three Rivers, and below the *Port* of Montreal." In the beginning of the clause, the rate of pilotage between the harbour of Quebec and the Town of Three Rivers had already been fixed. The end of the clause in which the words above quoted are to be found, had reference to the fixing of the rate of pilotage between Three Rivers and Montreal.

2. On the other hand, it shows that, although since the passing of the Act of 1805, the "Port" and the "Harbour" were not one and the same thing, both having different limits; yet the word "Port" has often been made use of in Legislative Acts, to mean only the "Harbour," thereby introducing a great deal of OBSCURITY in their enactments.

Repealed by Act of 1849, chap. 114.

VII. In the preamble of another act passed in 1812, 52nd Geo. III, chap. 12, the words "Port" and "Harbour"

are made use of together, but apparently both to mean only "The Harbour;" as in the following passage: "Separate "Funds established as well for Pilots for the River St. "Lawrence *below* the *Port* and *Harbour* of Quebec, as for "Pilots for the River St. Lawrence *above* the *Port* and "*Harbour* of Quebec." The word "Port" in the following words, "above the Port of Quebec," in the first section, is correctly rendered in the corresponding French section, by the word "Hâvre" which means "Harbour;" since the enactment in which it is to be found, can only apply to the "Harbour" and not to the "Port" of Quebec; otherwise, there would be no sense in the enactment. The word "Port" is there intended precisely to signify what is meant by the word "Harbour" used in a previous part of the same section in connection with the decayed Pilot Fund.

VIII. In another Act passed in 1819, 59th Geo. III, chap. 9, the word "Harbour" in the preamble is rendered in the French by the word "Port," which is not correct; for it has reference only to the *Harbour* of Quebec, and not to the Port; likewise, the word Port is incorrectly used in the two versions of the enactments of the first section, instead of the word "Harbour," since the *Harbour* only is meant, and not the *Port*.

IX. In the 1st and 10th Sections of an Act passed in 1822, 2nd Geo. IV., chap. 7, are to be found the words, "Port of Montreal," although there was then no such Port in existence. The word *Port* was so used in that Act as no doubt meaning "Harbour."

X. The first Act which provides for the appointment of Commissioners in connection with the Harbour of Montreal, is an Act passed in 1830, 10th and 11th Geo. IV., chap. 28, intituled: "An Act to provide for the improvement and enlargement of the Harbour of Montreal." Harbour Commissioners. Repealed by Act of 1845, chap. 75.

1. The Montreal harbour, then legally known as such, was the Harbour above described, the limits of which had been fixed by the Act of 1805.

2. By the Act of 1830, chap. 28, power is given to the Governor to appoint three Commissioners "for the purpose of carrying this Act into effect." (Section 1st.)

3. "The Commissioners shall proceed to improve and "enlarge the *said* harbour, according to the Plan made by "Captain Piper, &c., &c.; provided, always, that only that "portion of the said work lying between the upper end of "Moreau's Wharf (marked No. 2 on the said Plan) and "Saint Gabriel Street (marked No. 5 on the said Plan), "including the improvements of Market Island and the "*Revêtement* of that part of Commissioners Street which is "included within the said limits, shall be commenced or "undertaken under the authority of this Act; provided "further that no part of the said work shall be undertaken "or commenced until the property of the said Market Island "shall be vested in the said Commissioners, and their "successors are hereby empowered to take, have and hold "the same *in trust for the purposes aforesaid.*" (Section 2nd.)

4. It must be here remarked that the works to be done under the authority of the Act of 1830, were confined to a limited portion of the harbour; and it would seem that, the said works having been once performed, the Statute of 1830 had had its full accomplishment and become effete; that the Commissioners were not to have the administration or management of the harbour, nor of the said works, since such management was not conferred upon them, with the exception (it might, perhaps, be contended) of the Market Island, which they were authorized to take and hold in trust.

5. On the other hand, it being expressly declared by the Statute of 1830 that the taking and holding of the Island was "for the purposes of this Act," it might, not without apparent good ground, be contended that the ends of the Act being, by the execution of the works, accomplished, the possession of Market Island in trust by the Commissioners, could not be legally extended beyond that time.

6. Such, it appears, would be the state of things, were

the Statute of 1830 the only law enacted with regard to that subject.

XI. But in 1831 there was passed another Act, 1st Will. IV., chap. 11, conferring larger powers upon the Commissioners, and evidently having for its object to give them, for an indefinite period, the administration or management, if not of the harbour itself, at least of the works executed under their direction. Repealed by Act of 1845, chap. 76.

1. First, they have the power to borrow a sum of £10,000, in addition to the like sum of £10,000 which they had already been authorized to borrow under the Act of 1830, "for the purpose of defraying the expenses attending the "execution of the work *therein* mentioned," that is to say, of the works undertaken under the authority of the Act of 1830.

2. Certain rates of wharfage and dues are made payable (by Section 3rd) on all vessels, &c., *lying at any part of any of the wharves or quays erected or to be erected under the authority of the Act of* 1830, and on certain enumerated articles, &c., &c., such rates and dues to be levied until the 1st of May, 1833. (Section 4th.)

3. The Commissioners have the right to appoint a Collector of the said rates and dues, to sue for and recover the same, &c., &c. (Section 6th.) They are likewise authorized to seize and detain boats, &c., doing injury to "the said wharves or quays, or to any of the works erected under the authority of the Act of 1831." (Section 7th.) They are the persons who are to pay off the principal and interest of the sums borrowed. (Section 5th.)

4. The Commissioners are moreover required annually to submit to the three branches of the Legislature a detailed and particular account of the moneys by them received and expended under the authority of this Act of 1831, or of the said Act of 1830, as well as of the vessels, &c., upon which tolls shall have been levied during the preceding year, together with a statement of their proceedings in the execution of their duties. (Section 9th.)

Repealed by Act of 1845, chap. 76.

XII. Under another Act passed in 1832, 2nd Will. IV., chap. 36, the Harbour Commissioners are authorized to borrow an additional sum of £15,000 "for the purpose of defraying the expenses attending the execution of the work mentioned in the said Act of 1830, or in this Act." (Section 1st.)

By the 5th Section it is enacted that "it shall be lawful for the said Commissioners, in improving and enlarging the said Harbour of Montreal, to make a wide pier from the upper end of Market Island to the beach, instead of making a bridge of communication at the lower end of the said Island, in the manner shewn in the Plan mentioned in the Act of 1830, which bridge the said Commissioners shall on no account make."

And by the 8th Section the Commissioners are directed annually to submit to the three branches of the Legislature a detailed account of their proceedings under the authority of *this* Act.

1st Montreal Trinity House.

XIII. It was in this Session of 1832, that the first Act establishing at Montreal a Trinity House independent of the Quebec Trinity House, was passed; viz. the 2d Will. IV, chap. 24. It was a temporary statute which was to expire and did actually expire on 1st May, 1837.

Expired on 1st May, 1837.

Port of Quebec.

Port of Montreal.

By this last act, two Ports are recognized, the Port of Quebec and the Port of Montreal; it being enacted by the second section "that the said Port of Quebec shall not hereafter extend or be deemed to extend higher up the said River Saint Lawrence than *Pointe du Lac* in the County of Saint Maurice; and the Port of Montreal shall extend from *Pointe du Lac* to the Province Line, and shall include such ports of the several rivers falling into the St. Lawrence within the said limits as shall be within this Province; provided always that the limits of the harbour of Quebec and of the harbour of Montreal, shall be and remain as established by the Act herein first above cited," that is to say the Act of 1805.

Harbour of Quebec.
Harbour of Montreal.

XIV. In order to follow the order of dates, mention is to be made of an Act passed in 1833, 3rd Will. IV., chap. 3, by the 3rd section of which the powers conferred upon the harbour commissioners by the 4th section of the Act of 1831, to levy certain rates of wharfage and dues until the 1st May, 1833, are continued and are to remain in force until the 1st May, 1835; on which day they expired; and from that time the said rates and dues were received by the Collector appointed by the Crown to collect the same, and mentioned in an Ordinance of the special Council of 1839, 2d Vict. (3) chap: 62. (see Wicksteed's *tables* under the 1st Will. IV., chap. 11.)

Repealed by Act of 1845, chap. 76.

XV. By an ordinance of the Special Council, passed in 1838, 1st Vict., chap. 23, the harbour Commissioners are further authorized to borrow a sum of £40,000 "for the purposes of defraying the expenses attending the execution of the work mentioned in the said Acts," that is to say in the Acts of 1830 and 1832. (Section 1.)

Repealed by Act of 1845, chap. 76.

1. It will be observed that up to the time of the passing of the Ordinance of 1838, the works to be executed under the direction of the harbour Commissioners were the specific works mentioned in the Acts of 1830 and 1832, and were confined to a very limited portion of the Montreal harbour; to such works therefore, and not to any other thing, were the powers of superintendence and management vested in the Commissioners, to extend. It must also be observed that at that time the limits of the Montreal harbour were still the same as those fixed by the Act of 1805.

2. But by the second Section of the Ordinance of 1838, it is enacted that it shall be lawful for the Commissioners, in the improvement and enlargement of the said harbour of Montreal, to proceed to the entire execution of the Plan of Captain Piper, of which mention is made in the second Section of the Act of 1830, and to the completion of all and every the works which may be necessary for such entire execution of the said Plan.

3. Lawful for the said Commissioners to carry on the level of Commissioners Street and the prolongation thereof, according to the Plan and level of Captain Piper, &c. (Section 3.)

4. And "for the greater improvement, utility and convenience of the said harbour, and for the more easy communication between the city and the harbour," the Commissioners are authorized by the same Ordinance to purchase "certain dwelling houses, land and premises, erected and being on the south side of the old market place and between the said market place and the River," and also "certain pieces or parcels of land contiguous to the said harbour for the purpose of widening and prolonging the street called Commissioners Street, in front of the said harbour." (Section 5th). And the right of property, title and interest in and to the same, are vested in the harbour Commissioners and their successors, for the purpose of the said Acts of 1830 and 1832, and of this ordinance of 1838. (Section 8.)

XVI. After the first of May, 1837, there ceased to be a Trinity House at Montreal, the temporary act of 1832 having expired on that day. But on the 14th of March, 1839, there was passed an ordinance of the Special Council, 2d Victoria, chap. 19, which established a new Trinity House in the City of Montreal, distinct from that of Quebec. (Section 1 and 3.)

Repealed by Act of 1849, chap. 117.

1. The limits which this ordinance fixes for the Ports of Quebec and of Montreal, are not the same as those settled by the temporary act of 1832, chap. 24.

Port of Quebec.

2. According to the second Section "the Port of Quebec shall not hereafter extend, or be deemed to extend, higher up the River Saint Lawrence, than the Basin of Portneuf inclusively, in the District of Quebec; and the Port of Montreal, shall extend from the said basin of Portneuf, exclusively, to the Province line, and shall include such parts of the several rivers falling into the Saint Lawrence within the said limits, as shall be within this Province; provided always that the limits of the harbour of Quebec and the

Port of Montreal.

Harbour of Quebec.

harbour of Montreal shall be and remain as established by the Act of 1805." Harbour of Montreal.

3. The Montreal Trinity House is to consist of a Master, a Deputy Master, and five Wardens; they are declared to be a body politic and corporate, in name and in deed by the name of "The Master, Deputy Master and Wardens of the Trinity House of Montreal," and to have perpetual succession &c., &c., and to be capable in law to purchase, have, hold, receive, enjoy, possess, and retain moveable property and immoveable estates "*for the purpose* of erecting a light-house or light-houses, beacon, or beacons, or *otherwise improving the navigation* and pilotage of the River St. Lawrence, and other rivers within the limits of the Port of Montreal." (Section 3.)

4. The Trinity House of Montreal is "to hear and determine all matters and things relating to *any beach* of the River St. Lawrence; or of any other rivers within the *jurisdiction* of the Corporation." (Section 7.)

5. By the 28th Section, power is given to that Corporation to purchase certain islands, lands and premises, pieces and parcels of land within the said jurisdiction, "for the more safe, convenient and easy navigation of the River St. Lawrence, and other rivers within that jurisdiction, for the purpose of erecting a suitable and convenient house in the City of Montreal, for the use of the said Corporation, and for erecting light-houses, beacons and land marks;" and the right of property in the same, when so purchased, is declared to be vested in the Corporation "for the purposes aforesaid." (Section 31.)

XVII. In the same Session of the Special Council, on the 13th April, 1839, another Ordnance, 2d Vict., chap, 62, was passed, having for object the more easy collection of the harbour dues at Montreal. Repealed by Act of 1845, chap. 76.

By the first Section, it is provided that all the rates, tolls, wharfage dues and harbour dues, of any kind whatsoever, imposed by the Acts of 1831, chap. 11, and 1832, chap. 36,

shall be levied by, and paid to the person appointed to receive and collect the same, by the Governor; and the person so appointed is to be called "The Collector of Harbour Dues." (Section 1.) This officer may sue and recover any such rates, tolls and dues, or may seize and detain any vessels, &c., &c. (Section 2.)

Repealed by Act of 1845, chap. 76.

XVIII. On the 13th of May, 1840, the Special Council passed another Ordinance, 3d Vict. chap. 28, to authorize the harbour Commissioners to borrow an additional sum of £23,000 "for the purpose of defraying the expenses attending the execution of the works mentioned in the said Acts (1830 and 1832) and in other Acts and Ordinances relative to the said harbour, and in this Ordinance." (Section 1.)

1. By the 3d Section, the Commissioners have power, "in and for the improvement and enlargement of the harbour of Montreal, to proceed to the entire execution of the plan heretofore approved and sanctioned, with reference to such improvement and enlargement of the said harbour, and to the completion of all and every the works which may be necessary for such entire execution, of the said Plan, and of all and every the works mentioned in the Ordinance herein last above cited." (No such ordinance had yet been cited.)

2. The Commissioners may, with the consent and approval of the Governor, "continue the revetement wall and filling in, from their present termination at Grey Nuns street, upwards to the entrance lock of the Lachine Canal, and to make a double ramp at Grey Nuns street, and to purchase and hold so much of the ground now belonging to Nahum Hall, as may be necessary for the said purposes, or to make a wide and easy access to the wharves of the said harbour from the said canal; and to continue the said revetement wall and filling in from their present lower termination from St. Gabriel Lane downwards, *to the Government works at the Commissariat Store*." (Section 4.)

3. The steam-dredging vessel, with all its apparatus and

machinery, purchased under the authority of an Act of 1830, chap. 19, is placed under the control and management of the Commissioners "to work and use the same within the said harbour." (Section 5 and 6.)

4. By the 8th Section, lands or real property acquired by the Commissioners, under the authority of this Ordinance, are declared to be vested in the Commissioners and their successors" for the purposes of this Ordinance, and of the said Ordinance (1st Vict. chap. 23), and the Acts of the Provincial Legislature, relative to the said harbour and hereinbefore cited and mentioned." (Section 8.)

XIX. By another Ordinance of 1840, 3d Vict. chap. 29, the above cited Ordinance of 1st Vict. chap. 23, is made permanent. Repealed by Act of 1845; chap. 76.

XX. An Ordinance of 1841, 4th Vict: chap. 12, gives to the Governor, when he shall deem it expedient, the power to appoint additional harbour Commissioners. (Section 1.) Repealed by Act of 1845, chap. 76.

1. The Commissioners are authorized to borrow £17,000. (Section 12.)

2. The 4th Section enacts that it shall not be incumbent upon the Commissioners to continue the revetement wall upwards, beyond the point to which it may be necessary to continue the same in order to make and complete the double Ramp at Grey Nuns Street, if they shall deem it advisable to abstain from performing the said work or any part of it.

3. The Commissioners are authorized by the 5th section to cause certain enumerated works to be performed during the year 1841, amongst others, "a sufficient water course along all those parts of the street or highway next to the said harbour, which are or shall be bounded by the revetement wall, and along which no such water course has yet been made; and the water course so to be made shall be at the same distance from the back of the revetement wall, as the water course already made now is."

4. "The north westerly side of the said water course shall, throughout its whole length, to THE BOUNDARY of the works

under the control and management of the said Commissioners on the side next the City of Montreal, and shall form the line of division between the said works and that part of the street or highway along which the said water course shall run, which shall be under the control and management of the Corporation of the Mayor, Aldermen and citizens of the said City of Montreal." (Section 6.)

5. By the 9th Section, the rates of wharfage and dues imposed by the Acts of 1831, chap. 11, and of 1832, chap. 36, are abolished from and after the 1st May, 1841, and others are substituted in place and stead thereof, to be levied and paid on "all vessels, &c., and on all articles landed or disembarked from, or shipped or put on board of any such vessel, &c., *lying at any part of the wharves, quays or other works erected or constructed, or to be erected or constructed*, for the improvement of the harbour of Montreal *by the said Commissioners*, their predecessors or successors in office as such, under the authority of any Act or Ordinance heretofore passed or of this Ordinance, or *lying, whether in the stream or otherwise, within any part of the harbour of Montreal*, which shall, FOR THE PURPOSES OF THIS ORDINANCE, be held to extend *from the Lachine Canal wharf* to the lower extremity of the revetement wall, that is to the *point* where the said wall joins the Government works *at the Commissariat store*."

6. Such rates of wharfage to be received and applied by the Commissioners; they may appoint any person to receive the same, and allow to such person 2½ per cent. (Section 10.)

7. All and every the powers and authorities vested by the Ordinance 2d Vict. chap. 62, in the Collector of the harbour dues with regard to the rates, tolls and wharfage dues in the said Ordinance mentioned and to the recovery thereof, are vested in and may be exercised by the said Commissioners with regard to the new rates, &c., (Section 11.)

8. It is to be observed that until the passing of the said Ordinance of 1841, chap. 12, there was but one harbour of Montreal, extending, according to its limits as fixed by the

Act of 1805, from the Bay below the current of Saint Mary's to the Point of Saint Anne's; but after the passing of that Ordinance, there existed two harbours of Montreal, the one as established by the Act of 1805, and the other by the 9th Section of this Ordinance; the latter being included in the former, but having much more restricted limits; thus we have what may be called the old harbours or harbour of the Trinity House, and the new harbour or harbour of the Commissioners; all which tending not a little to create confusion and conflict of authority.

Repealed by Act of 1849, chap. 117.

XXI. In the first Session of Parliament after the Union, 1841, there was passed an Act, 4 and 5 Vict. chap. 59, to authorize the construction, by the Board of Works, of certain Light Houses, or Lights, within the limits of the *Port of Montreal.* (Section 1st.) Such Light Houses and Lights, completed, and the ground (if any) acquired for the site thereof, to be transferred to and vested in and maintained by the Corporation of the Trinity House of Montreal. (Section 3).

Additional rates of dues, called Light Duties, are imposed upon all ships, &c., &c., "coming into the Port of Montreal, from any place below and beyond the limits of the said Port," and are to be paid to and collected by "the naval officers of the Port of Quebec, or such person as shall perform the duties of that office at the Port of Montreal," and to be, by that officer paid over to the Trinity House of Montreal, to be applied by that Corporation, amongst other things, to "the improvement of the navigation of the River Saint Lawrence, within the limits of the Port of Montreal, and the general purposes of the Corporation.

XXII. The next Provincial Act in the order of dates, is an Act of 1845, 8. Vict. chap. 76, which repeals several of the Acts and Ordinances above mentioned, viz., 10th and 11th Geo. IV., chap. 28, 1st Will. IV., chap. 11. 2nd Will. IV., chap. 36, 1st Vict. chap. 23, 2d V. (3) chap. 62, 3d V. chap. 28 and 29, and 4th Vict. chap. 12.

1. This Act of 1845 is entitled, "An Act to provide for the improvement and enlargement of the Harbour of Montreal, to authorize the Commissioners to borrow a further sum of money for that purpose, to consolidate the laws now in force relating to the same, and for other purposes therein mentioned."

2. The Harbour Commissioners heretofore appointed are continued in office. (Section 2.)

3. The steam-dredging vessel mentioned in the Act of 1830, chap. 19, is placed under the management of the Commissioners, "to work and use the same within the said harbour for so long a period, in such manner and for such purposes, as they and their successors shall think fit." (Section 4.)

Harbour of Montreal for certain purposes.

4. By the fifth Section, it is enacted "that the *said* "Harbour of Montreal, and *the space* which shall be and is "hereby declared to be under the control and management "of the said Commissioners, and their successors in office, "shall be, and the same, *for the purposes of this Act*, is "hereby declared to be bounded as follows, to wit; such "space shall begin at the lower extremity of the Lachine "Canal wharf, and shall extend downwards to the lower "extremity of the revetement wall, that is to the point where "the said wall joins the Government works at the Commissariat "store and the Government wharf; and the boundary on the "side next to the city of Montreal, shall be the north-west "extremity of the water course running parallel with and "adjoining the revetement wall in the street or highway "running along the whole line of the wharves now known as "Commissioners street; and all the portion between the "said extremity of the said water course and the city of "Montreal, shall be under the control and management of "the Corporation of the Mayor, Aldermen and citizens of "the said city of Montreal."

5. The Commissioners are authorized to construct new wharves and other works; "The whole in conformity with

" the plans and specifications of John Cliff, Architect, now " deposited to remain of record in the office of the Secretary " of the Province." (Section 9.)

6. The application and payment of the monies arising from tolls, rates and wharfage dues, imposed by the said Act, are directed to be made by the Commissioners, in the manner specified by the 10th Section, first to defray their expenses of collection and those received by them in keeping the works constructed " by the said Commissioners, their predecessors or successors in office, &c., &c."

7. By the 11th Section, the Commissioners have authority to levy and receive the said tolls, wharfage and harbour dues.

8. They and their successors in office, have power to appoint officers, agents, clerks, &c., &c., and to allow them reasonable salaries, &c. (Section 12.)

9. The Commissioners " shall have power and authority, " *in their own names as such Commissioners,* to sue and be " sued, plead and be impleaded, bring or defend, or cause to " be brought or defended, all suit or suits at law, or in equity " in all Courts and places whatsoever, and to take all " proceedings necessary and requisite to enable them, the said " Commissioners, and their successors in office, *to carry out* " *and perform all and every the duties, terms and provisions* " *in this Act contained.*" (Section 13.)

10. The 14th Section fixes the rates of wharfage and dues to be levied and paid on all ships, &c., and on all articles landed from or taken on board of all ships, &c., " lying at or near to any part of the wharves, quays, piers or other works erected or constructed, or to be erected or constructed under the authority of any Act or Ordinance, heretofore passed, or under the authority of this Act, or lying whether in the stream or otherwise, within any part of the harbour of Montreal, *as the same is hereinbefore declared to be bounded and to extend.*"

11. And by the 15th Section, the said rates of wharfage and dues are made payable to " the Collector of Customs at

the Port of Montreal, for and on behalf of the said Commissioners and their successors in office," on demand; and the Commissioners "may sue for and recover any and all such rates and dues &c., and have power, even before judgment to seize any ship, &c., &c.

12. "If any injury shall be done to the said wharves or "quays, or to any of the works now erected, or which may "be erected under the authority of this Act, by any ship, "vessel, steamboat, boat, barge, scow, raft, or other craft, "willfully or by the carelessness of the crew, *but not* "*otherwise*, it shall be lawful for the said Commissioners and "their successors in office, or for any person employed by them "or under them as aforesaid, to seize and detain," &c., &c. (Section 17.)

The Commissioners are required annually to submit to the Governor a detailed account of the monies received and expended by them, with a statement of their proceedings. (Section 19.)

14. It must be remarked that under this Act of 1843, there continued to be two Harbours of Montreal, as under the Ordinance of 1841, chap. 12, with their respective limits as then existing.

XXIII. The Act of 1845 was amended by an Act passed in 1847, 10th and 11th Vic., chap. 56, the second section of which is in the following terms:

"Whereas, from the pressing and urgent demands for "wharf and beach accommodation on the part of individuals "engaged in the lumber and firewood trade, it is necessary "*to extend* the limits of the SAID Harbour of Montreal, and "to give to the said Commissioners power and authority over "*such new and other limits;* be it therefore enacted that "the limits of the *said* Harbour, shall from and after the "passing of this Act, be considered and deemed to extend "(in addition to the present limits) downwards from the "lower extremity of the Government Beach lots, to the "lower extremity of the Victoria Road, in St. Mary

" Suburbs ; and it shall be lawful for the Commissioners of " the said Harbour, and their successors in office, to " construct, build and erect a Beach wharf from the said " lower extremity of the said Government property to the " foot of Saint Nicolas Tolentin Street, covering a frontage " of about 860 feet ; and the said Commissioners shall and " may have and exercise over the said additional boundaries " or space hereinbefore mentioned, all and every the same " control, powers, authority, rights and privileges which are " given to and conferred on them with respect to and over " the boundaries and space mentioned in the 5th clause of " the said Act hereby amended," viz: the Act of 1845, chap. 76.

By the 3rd Section the Commissioners are authorized to borrow a sum of £7,000 for the construction of certain works mentioned in the 5th section.

By the 6th Section, a new tariff of rates and dues is substituted, in lieu and stead of the tariff established by the Act of 1845.

Although the words "*said* harbour," used in the second section of the Act of 1847, refer to "The Harbour of Montreal" as mentioned in the title and first section of the Act without any distinction between the old and the new harbour, it is obvious that the words apply to the latter and not to the former ; for, notwithstanding the extension given to its limits by this Act of 1847, yet the New or Commissioners' Harbour continues to be more limited than the old Harbour, which extends to the Bay below the current of St. Mary's.

XXIV. By the Act of 1849, 12th Victoria, chap. 119, the Commissioners are authorized to commute the harbour dues accruing to them, with the Champlain and Saint Lawrence Railroad Company, and with the Saint Lawrence and Atlantic Railroad Company. It was a temporary Act ; and besides, it has been repealed by an Act of 1850, chap. 97, Section 6.

Repealed by Act of 1850, Chap. 97.

XXV. The Ordinance, 2. Vict. (3) chap. 19, by which the Montreal Trinity House had been established, and the Act of 4th and 5th Vict. chap. 59, above cited, have been repealed by an Act of 1849, 12th Vict. chap. 117, and by which the provisions of the former are amended and consolidated.

1. The Corporation of the Trinity House of Montreal, is not constituted a new Corporation; on the contrary, it continues to subsist as it existed before the passing of this Act, by the name of "The Trinity House of Montreal," and the members and officers thereof are continued in their respective offices, without any new commission. (Sections 1 and 3.)

2. The Corporation may sue and be sued, &c., and is declared to be able and capable in law to acquire property "for the purpose of erecting Light Houses or Beacons, and for the other purposes of this act." (Section 1.)

Port of Montreal.

3. By the 4th Section, it is enacted that *for all the purposes of this act*, the Port of Montreal shall be held and deemed to comprehend all that part of the River Saint Lawrence which extends from the Basin of Portneuf, exclusively, in the County of Portneuf, in the district of Quebec, to the Province Line formerly dividing the Provinces of Upper and Lower Canada, and shall include the several rivers falling into the Saint Lawrence within the said limits,

Harbour of Montreal.

and the Harbour of Montreal, *for the said purposes* shall be held and deemed to extend to, and comprehend that part of the said River St. Lawrence extending from the Point, commonly called Point St. Charles, to the south-west-end of the *Military Hospital* below the Quebec Barracks; and it shall be incumbent on the master, deputy master and wardens to cause to be erected land-marks to indicate the said Boundaries, which land-marks shall be taken to determine the same."

4. The Trinity House have power "to have and determine all matters and things relating to any beach of the River St.

Lawrence or of any rivers, within the Jurisdiction of the Corporation." (Section 7.)

5. The offices of Captain of the Port of Montreal and Harbour master of Montreal, are to be held by one and the same person, who is to be called "Captain of the Port of Montreal." (Section 31.)

6. The Corporation is authorized to acquire certain islands, lands, buildings, &c., for the purpose of erecting a suitable house in the City of Montreal for the use of the said corporation, and for erecting Light Houses, Beacons and Land-marks," for the more safe, convenient, and easy navigation of the River Saint Lawrence, and other rivers within the Jurisdiction of the said Trinity House," (Section 32.)

And any such property to be vested in the said Corporation for the purpose aforesaid. (Section 35.)

7. Certain tonnage duties to be levied in certain cases. (Sections 40, 41 and 42.)

8. All moneys levied and raised under this act (excepting the Poundage for the Montreal decayed Pilot Fund) are to be applied to the improvement of the navigation of the River St. Lawrence, and other waters within the limits of the Port of Montreal, and for the other purposes and requirements of this Act under and by authority of the Corporation of the Trinity House of Montreal, (Section 43, see also Section 49), for fines and penalties.

9. It will be observed that after the passing of this Act, the old harbour of Montreal as originally established by the Act of 1805, chap. 12, lost a considerable portion of its eastern limits, by being restricted, under this new Act, to the south-west end of the Military Hospital.

Then the old harbour became from that moment more limited in extent than the new or Commissioners' Harbour, which at that period extended, in that direction, to the lower extremity of Victoria Road.

XXVI. The above cited Act of 1849, chap. 117, was amended by an Act of 1850, 13 and 14 Vict. chap. 95, by exempting the Masters of vessels navigating between the Basin of Portneuf and the Harbour of Montreal, from taking Branch Pilots, &c.

XXVII. In the same Session of 1850, there was passed "an Act to amend the Acts for the improvement of the harbour of Montreal, and provide for the improvement of the navigation of the River St. Lawrence within the Port of Montreal," 13, and 14 Vict. chap. 97. The two Acts referred to are the 8th Vict. chap. 76, and 10 and 11 Vict., chap. 56.

1. By the 1st Section of this new Act the limits of the harbour of Montreal that is to say the Commissioners' Harbour, are extended from Victoria Road downwards to *Ruisseau Migeon*, and it is declared that the Commissioners "shall have and exercise over the said harbour, with the said extended boundaries, the same control, powers, authority, rights and privileges by them now held and exercised in and over the said harbour as now bounded."

2. Under the 3rd Section, the Commissioners have power to acquire certain real property and to construct thereon such buildings as may be deemed necessary for offices, &c., "such real property to be vested in the Crown, and under the controul of the Commissioners."

3. By the 4th Section, a new tariff of wharfage and dues is established and substituted in lieu of the tarriffs fixed by the two Acts amended by the present; such wharfage and dues to be levied and paid upon all ships, &c., and on all goods landed from or taken on board of any ship, &c., "lying at or near to any part of the harves, quays, piers or other works in the said harbour, erected or constructed under the authority of this Act, or of any Act or Ordinance heretofore passed, or at or near to any part of the shore or beach of the said harbour wherein no such work shall have been or be so constructed, or being, or lying, whether in the stream, or otherwise, within any part of the said harbour, *as the same is hereby declared to be extended and bounded.*"

4. The Commissioners are authorized to borrow £30,000 (Section 9.) to defray the expenses of deepening and otherwise improving Lake St. Peter, and the channel at *Isle Platte*. (Sect. 11.) A certain tonnage duty may also be imposed by the Governor in Council upon the application of the Commissioners. (Section 12.)

XXVIII. By an Act of 1851, 14 and 15 Vict. chap. 26, the Montreal Trinity House Act of 1849, (12 Vict. chap. 117,) is amended in so far as it relates to the tonnage duty, and to the mode of recovering the same.

XXIX. And by another Act of the same Session, (1851,) chap. 27, the Act of 13 and 14 chap. 97, is also amended, in so far as relates to the wharfage on firewood, schooners and river craft with firewood.

XXX. By the new incorporation Act passed in 1851, chap. 128, the limits of the City of Montreal are declared to be the same as fixed by the Proclamation of Sir Alured Clarke, of 7th May, 1792. (Section 3.)

The East, Centre, West, St. Anne's, St. James, and St. Mary's wards are bounded by the River St. Lawrence in their respective limits. (Section 4 and 5.)

Under the 53d and 58th Section of this last Act, the City Council have the exclusive power to grant ferry licences to persons plying as ferry-men to the City, from any place within nine miles; and may impose a duty upon the said persons, make By-laws for the government of, and tariff of fees for the said ferry-men, and also fix and determine what places in the City may be used as landing places, &c., &c.

The same Council have also the power to make By-laws "for the good rule, peace, welfare, improvement, cleanliness health, internal economy and local government of the said City, and for the prevention and suppression of all nuisances, and all acts and proceedings in the said city, obstructive of, or opposed, or disadvantageous to, the good rule, peace, &c.

And by the 92nd Section, in the form of a proviso, it is

enacted, "That nothing in this Act shall extend or be "construed to extend, to revoke, alter, or abridge or in any "manner affect the powers and authority now by law vested "or which may hereafter be vested in the Master, Deputy "Master, and Wardens of the Trinity House of Montreal, "*or in the Commissioners* appointed or to be appointed for "the execution of any Act now in force or hereafter to be in "force, relating to the improvement and enlargement of "the Harbour of Montreal, or any of them, or in the "Commissioners appointed or to be appointed for making, "superintending, repairing and improving the Lachine Canal, "nor to the wharves and ships erected or to be erected by the "said first mentioned Commissioners, nor to the wharves and "grounds under the direction of the said last mentioned "Commissioners; provided always that the said Corporation "of the city of Montreal, shall have power, so often as the "same may be requisite, to open any drain leading from the "said city to the River St. Lawrence; to employ the "Constabulary Force of the said city in the maintenance of "peace and good order on the said wharves, and to appoint "and designate stands or places of rendezvous for carts and "carriages thereon."

In the Ordinance of the Special Council of 1840, chap. 36, by the 2nd Section of which the limits of the city of Montreal are declared to be those established by the proclamation of Sir Alured Clarke, that proclamation is mentioned as of 1791. This error, as to the date, was rectified by an ordinance of 1841, chap. 32. (Section 1.)

The same limits are given by the 2nd Section of the Act of 1845, chap. 59, by which the two preceding ordinances are amended and consolidated.

And the 76th Section of the last above cited Act is the same as the 92nd Section of the Act 1851, chap. 128. It was also, less the Proviso, the 52nd Section of the ordinance of 1840, chap. 36.

XXXI. Reference may be made to the new Quebec

Trinity House Act, chap. 114, passed in 1849, in the same session as the last Montreal Trinity House Act.

The 6th Section gives to the Quebec Trinity House the power of making By-laws for, amongst other things ;

11. "The construction of wharves and of buildings thereon for the use of the Trinity House of Quebec ;

12. "The imposing, levying and receiving of wharfage or other dues to be paid by vessels and craft of all kinds entering the *Cul-de-Sac*, or undergoing repairs, or wintering therein."

There being no similar or analogous provisions in the Montreal Trinity Act, it may be inferred that the harbour Commissioners alone can exercise the powers which, in this respect, are given to the Trinity House of Quebec.

The 11th and 12th Sections have reference to the limits of the Port and of the Harbour of Quebec respectively.

Nature and Extent of certain powers given, at different periods, first to the Trinity House of Quebec, and afterwards to the Trinity House of Montreal, and not yet referred to in these Notes.

XXXII. Act of 1805, chap. 12.

According to the second Section, the Quebec Trinity House had power to make By-laws for "the more convenient, "safe and easy navigation of the River St. Lawrence, from "the first Rapid above the city of Montreal, downwards, as "well by the laying down, as taking up of buoys and anchors, "as by the erecting of light houses, beacons, or land marks, "the cleaning of sands or rocks or otherwise howsoever ; and "also for the amendment and improvement of the harbour of "Quebec and regulating the *Cul-de-Sac*, and harbour of "Montreal, and preventing injury thereto, for t anchoring, "riding and fastening of all ships, and other vessels, resorting "to the said harbour of Quebec and Montreal, and for the "better regulating and order the same while lying in the "stream or at any wharf or wharves in the said Harbour of

" Quebec, or careening on the beach of the said Harbours, " and also in respect to fire-places on board ships or vessels, " and lighting and extinguishing fires therein; as also " respecting lighted candles, when such ships or vessels lay at " any wharf or quay, or in the *Cul-de-Sac*, at Quebec, or " harbour of Montreal; also in respect to the boiling or melting, " of pitch, tar, turpentine or rosin in the Harbours, or on the " beaches of Quebec and Montreal, or *Cul-de-Sac*, of Quebec; " and also for the government and regulation of the Pilots of " the Port of Quebec, &c., &c.

By the 18th Section, the Quebec Trinity House had power " to hear and " determine all offences committed against " this act or against any such By-law, Rule, Regulation or order by any person or persons whatever, *for which especial provision is not herein made for trial in other Jurisdictions*, &c., &c.

XXXIII. Act of 1832, chap. 24, incorporating the Montreal Trinity House. Under the authority of this Act, the new Corporation has the right, in so far as regards the Port and Harbour of Montreal, to make By-laws for the same objects for which the Quebec Trinity House had heretofore the power to make any such By-law; which By-laws extend to the whole of the Port of Montreal, without any restriction, as to navigation, to the first rapid above the City of Montreal, as provided for in the Act of 1805; they therefore include not only the navigation of the River St. Lawrence, but also that of the several rivers within the limits of the Port of Montreal, within the meaning of the 2nd section, that is to say such rivers as fall into the Saint Lawrence. No such provision regarding them had been made by the Act of 1805. (Section 4.)

As to offences committed against this Act of 1832, or, against any By-law made under the authority of the same, the 10th section gives to the Montreal Trinity House precisely the same powers which in that respect were vested in the Quebec Trinity House, by the Act of 1805, S. 18.

XXXIV Ordinance of 1839, chap. 19, establishing a new Trinity House at Montreal.

As to making By-laws, the new Corporation has the same powers as those given to the corporation erected by the Act of 1832. The words "Light-ships or Floating Lights" are added to the 6th Section of the Ordinance.

As to offences, the 7th clause of the Ordinance gives to the new Corporation the same powers as were vested in the first Trinity House, under the Act of 1832. The new Corporation had also the power "to hear and determine all matters and things, *relating to any Beach of the River St. Lawrence, or of any other River within the Jurisdiction of the Corporation.*" These words which are inserted in the commencement of the 7th clause of the Act of 1839, are not to be found in any of he former Acts.

XXXV. Act of 1849, chap. 117, consolidating the laws relating to the Montreal Trinity House.

By this Act, the Corporation is again vested with the same powers which it had under the Ordinance of 1839, chap. 19, with the addition, in the 5th Section, of the following words:

1. In reference to the limits of the Port of Montreal: "From the Basin of Portneuf, in the county of Portneuf, to the Province Line, formerly dividing the Provinces of Upper and Lower Canada."

2. With regard to the extent of the power to make By-laws, "And for removing and preventing encroachments and encumbrances thereon."

"For regulating and controlling the landing of gunpowder within the limits of the harbour of Montreal."

"For the maintainance of order and regularity, and the prevention of theft and petty depredations in the said Harbours."

As to the power of hearing and determining offences, the 7th Section of the Act of 1849 contains the same provisions as the Ordinance of 1839, S. 7.

APPENDIX.

JACQUES DU CHESNEAU, *Chevalier Commandent du Roy in Council, Intendant of Justice, Police, and Finance in Canada, North America.*

It having been represented to us by some of the inhabitants of the parish of St. Pierre, that some of the residents, of their own private authority and for their own particular behoof, have made a road therein which was useless in several places, even to the water side, and which was very difficult and inaccessible, particularly in the autumn, as well as in the spring, owing to the mud in which beasts of burden and those employed in hauling carts frequently stuck fast and sometimes perished, —to all which our attention has been directed and having personally inspected the locality in company with the larger number of the inhabitants.

We order that the said ordinary road leading out of this town of Ville Marie shall be travelled over in vehicles, as has always been the usage, as it may be ordered by the Sieur Dollier, Superior of the Seminary, as representing the Seigneurs of the said Montreal, and by the Sieur Migeon, *Bailli* of the said place, before the Sieurs Lehort and Charles Lemoyne and Nicollas Voger, *habitants*. The said road shall have a width of thirty-six feet, the ordinary width of the roads in the said island of Montreal. Directing the First Royal Bailiff, or other person, upon this requisition to make by virtue of our present ordinance, all the necessary dispositions. Done at Montreal the sixth August, one thousand six hundred and eighty.

[Signed] DU CHESNEAU,

By Monseigneur CHEVALLIER.

REMARKS BY THE REV. M. COMTE.

On a road of 20 *toises around the Island of Montreal.*

It must be observed, in the first place, that Her Majesty does not possess these twenty toises. This is an error which gradually slipt into the Concession Titles through lack of examination.

By the Act of the 30th March, 1640, the company of New France

conceded the whole of the lower end of the Island, extending from the South-West up to 4 leagues above the mountain. The company excepts nothing in this concession. But in the conditions imposed we read the following clause. "The said company understands that the present "concession in nowise prejudices the liberty of *navigation* which will "be common to all the inhabitants of New France and in all the parts "hereinabove conceded, and to this end a Royal Highway of 20 toises "in width shall be left around the Island from the river shore to the "back lands and the same distance on the River St. Lawrence from its "shore to the conceded lands, the whole to serve for the transit and "traffic which is done on land."

It is evident from this wording that the company does not reserve the property or the direct Seignory of these 20 toises. It merely imposes, more especially, upon the Seigneurs the right in common Law to leave the transit free and not only not to obstruct the navigation by water, but to facilitate it by opening on land a highway of a width of 20 toises.

Her Britannic Majesty having succeeded to the rights of the company of New France has no more rights than the company; but Her Majesty as conservator of the Public Rights and as representing the said company should see to the execution of the charges hereinabove imposed upon the Seigneurs and prevent encroachments which would interfere with the liberty of transit.

But why does not a road 20 toises wide exist around the Island? Answer. In the first place it soon became apparent that it would be impracticable to make a road all around the Island from the river shore to the conceded lands in consequence of the nature of the ground which was too low in some places, too steep in others; it would have been requisite, therefore, to have followed the shore line in some places, in others to recede into the interior, according to the nature of the ground.

In the second place the settlers, the greater part of whom were destitute of means loudly complained of the excessive tax which a road 120 feet wide would entail upon them, in cost and maintenance, a road of such a width being besides useless as regards the object which the company had in view.

Consequently the road was never made of such a width; when the settlers commenced to establish themselves the road was confined to a width of 36 feet as mentioned in the ordinance of the Supreme Council of the 13th May, 1665, an ordinance the provisions of which were extended to the Island of Montreal; as may be seen in the ordinance of the Intendant (Jacques Du Chesneau) of the 6th August, 1680. In this ordinance, in fixing the width of a road along the river side at 36 feet he says that that is the ordinary width of the roads on the Island. It would be easy to find ancient *proces verbaux* which always fixed them at 36 feet and it is well known that wider never existed in the Island unless opposite the town for the convenience of the port.

From the beginning of the colony, all the concessions made at the instance of the officers of the Government give the *Censitaires* all the land to the river, to the shore. They have had the enjoyance of these lands for upwards of 200 years, and several times the Governor obliged them to desert their lands down to the shore in order to obviate the incursions and devastations of the Iroquois who then so terribly afflicted the country. They have consequently an incontestible title to all the land down to the river.

What are they bound to perform?

1st. To cede a road 36 feet wide because it is the constant usage, the By-Laws having always fixed roads at that width. The rest of the land is re-united to their properties like all abandoned or given up lands which return to the estates from which they have been taken. This road cannot be along the shore, where it would be impossible to make one, but placed at different distances as may be deemed convenient by the *Voyers* and Road Inspectors.

2nd. To leave the shore line open in accordance with the common Law and the concession, so that those who are engaged in navigating may land wherever necessary.

What should be the width of this shore line?

I can find nothing positive on this subject. It seems to me that it should comprise the space between high and low water, a space which will be more or less extensive according to the locality.

As to those who have encroached on the shore line or beach it appears to me that they should be subject to the rules imposed on those who encroach on the roads or public highways. When the public has had the enjoyment for a certain time, the passage, etc., of these roads they become public property. It seems to me that it would be quite easy in most places and particularly in the vicinity of the town to recognise the old boundaries of the several lots and the fences which separated them from the beach, and those who have trespassed these old boundaries, lines and fences appear to me to have encroached upon public property situated upon what we must take to be the beach.

ORDONNANCE DE L'INTENDENT Du CHESNEAU.

JACQUES DU CHESNEAU, *Chevalier Conseiller du Roy en ses Conseils, Intendant de la Justice, Police finance en Canada et Pays de la France Septentrionnalle.*

Sur ce qui nous a esté representé par les habitans qui ont Intérêt dans la Commune de Saint Pierre, que quelques uns d'eux de leur authorité privée, pour leur utilité particulière, quoique dommageable au publiq, auroient fait un chemin dans icelle, qui la rendoit inutile en plusieurs endroits, mesme auroient conduit le dit chemin au bord de l'eau, ce qui fesoit qu'il estoit très difficile et inaccessible particulièrement dans

l'automne et dans le printemps à cause des bouës dans lesquelles les bestes de charge, et celles employées à traisner les charettes demeuroient souvent et y périssoient: ce à quoi ils nous requéraient de vouloir pourvoir. Et après nous être transporté sur les lieux en questions avec la plupart des dits habittans:

Nous ordonnons que le dit chemin ordinaire tenant de cette ville de Ville-Marie, sera suivie en voiture, comme il a toujours esté d'usage, ainsi qu'il sera réglé par le Sieur Dollier Superieur du Seminaire et representant les Seigneurs du dit Montreal, et par le Sieur Migeon, Bailley du dit lieu, en présence des Sieurs Lebert et Charles LeMoyne, et de Nicollas Voyer, habittans. Le dit chemin *aura trente six pieds de largeur qui est celle ordinaire qu'ont les chemins de la dite Ile de Montreal.* Mandons au premier huissier Royal, ou autre, sur ce requis, faire en vertue de notre presente ordonnance tous actes nécessaires. Fait au dit Montreal, le sixième Aoust, mil six cent quatre vingt.

[Signé] DU CHESNEAU,

Par Monseigneur CHEVALLIER.

OBSERVATIONS DU REVEREND MR. COMTE.

Observations sur un chemin de 20 toises autour de L'Ile de Montreal.

Il faut observer d'abord que Sa Majesté n'a point la propriété de ces 20 toises. C'est une erreur qui s'est glissée peu-à-peu, faute d'examen du Titre de Concession.

Par l'acte du 30 Mars, 1640, la Compagnie de la Nouvelle France concède tout le bas de l'Ile, en s'étendant au Sud Ouest, jusqu'à 4 lieues plus haut que la Montagne. La Compagnie n'excepte rien dans la dite Concession. Mais dans les charges imposées vers la fin de l'acte, on lit cette clause—"Entend la dite Compagnie que la présente Concession ne "puisse prejudicier à la liberté de la navigation qui sera commune aux "Habitans de la Nouvelle France, et par tous les lieux ci-dessus "concédés; et à cet effet qu'il soit laissé un Grand Chemin Royal, de 20 "toises de large à l'entour de la dite Ile depuis la Rive jusqu'aux terres, "et pareille distance sur le Fleuve St. Laurent depuis la Rive d'icelui "aussi aux terres concédés, le tout pour servir à la navigation et "passage qui se fait par terre."

Il est evident par ces paroles que la Compagnie ne se reserve ni la propriété, ni la Seigneurie directe sur ces 20 toises; Seulement, elle impose plus spécialement aux Seigneurs une obligation, de Droit Commun, de laisser la navigation libre; et non-seulement de ne point obstruer le passage par eau, mais de le faciliter en laissant par terre un grand chemin de 20 toises de large.

Sa Majesté Britannique étant aux droits de la Compagnie de la Nouvelle France, ne peut avoir plus de droit que la dite Compagnie; mais Sa Majesté, comme Conservateur des Droits Publics, et comme

representant la dite Compagnie, doit veiller à l'exécution de la charge imposé ci-dessus aux Seigneurs, et empêcher l'empiètement qui nuiroit à la liberté de la navigation.

Mais, pourquoi le chemin de 20 toises n'existe-t-il pas autour de l'Ile ? Reponse : D'abord, on s'apperçut bientôt que ce chemin *tout à l'entour de l'Ile, de la rive aux terres concédées*, étoit absolument impraticable, à cause de la nature du terrein, trop bas en quelques endroits, trop escarpé en d'autres ; il fallut donc tantôt le rapprocher de la rive, tantôt s'en éloigner, suivant la nature du sol.

En second lieu, les Colons, la plupart denués de moyens, se plaignirent hautement de la charge excessive pour eux d'un chemin de 120 pieds à défricher et à entretenir ; une si grande largeur étant d'ailleurs inutiles à l'objet que la Compagnie avait en vue.

Aussi ce chemin ne fut jamais fait de telle largeur ; dès le commencement de l'établissement, on se borna à un chemin de 36 pieds, tel que mentionné en l'ordonnance du Conseil Superieur du 13 Mai, 1665, ordonnance dont les dispositions furent étendues à l'Ile de Montreal ; comme on peut le voir dans une ordonnance de l'Intendant (Jacques Du Chesneau) du 6 Août, 1680—Dans cette ordonnance, en fixant la largeur d'un chemin le long du fleuve à 36 pieds, il dit que c'est la largeur ordinaire des chemins de l'Ile. Il serait facile de trouver d'anciens procès-verbaux qui les ont toujours fixés à 36 pieds, et il est notoire qu'il n'y en a jamais eu de plus larges dans l'Ile de Montreal, si ce n'est vis-à-vis la ville, pour la commodité du port.

Dès le commencement de la Colonie, toutes les concessions faites au vu et sçu des officiers du Gouvernement, donnent aux Censitaires *jusqu'à la Rivière*, jusqu'au bord du fleuve—Ils jouissent de ces terres jusqu'à la Grève depuis près de 200 ans ; et à differentes fois, les Gouverneurs les ont obligés de déserter ces terres jusqu'à la Grève, pour prevenir les incursions et dévastations des Iroquois si terribles alors. Ils ont donc un droit incontestable à tout le terrein jusqu'au Fleuve.

A quoi sont-ils donc obligés ?

1er. A livrer un chemin de 36 pieds ; parceque l'usage constant, les Reglements, l'ont toujours fixé à cette largeur. Le reste du terrein se trouve réuni à leurs terres, comme tout chemin abandonné ou aboli retourne à la terre de laquelle il a été pris.—Ce chemin ne peut être le long de la grève, où il est impossible de le faire, mais placé à differentes distances selon qu'il a été trouvé convenable par les Voyers et Inspecteurs de chemins.

2me. A laisser la grève libre, selon le droit commun, et selon la Concession, afin que ceux qui naviguent puissent aborder à terre quand il est necessaire.

Quelle largeur doit avoir cette Grève ?

Je ne trouve rien de bien marqué sur ce sujet. Il me semble qu'elle doit comprendre l'espace qui se trouve entre les eaux hautes et les basses eaux, espace qui sera plus ou moins étendu suivant les lieux.

Quand à ceux qui ont empiété sur la grève, il me semble qu'il doit en

être comme des autres empiétemens sur les chemins ou voies publiques. Lorsque le public a joui pendant un certain temps de ces chemins, passage &c., &c., ils deviennent propriété publique. Il me semble qu'il est assez facile dans la plupart des lieux, et surtout aux environs de la ville, de reconnaitre les anciennes bornes des divers terreins, et les clotures qui les séparaient de la grève; et ceux qui ont outrepassé ces anciennes bornes, lignes, clôtures, me semble avoir empiété sur un terrein public, sur ce qui étoit censé la grève.

OPINION OF ALEX. BUCHANAN, ESQ., Q.C.

Montreal, 29th Nov., 1842.

Sir,—His Excellency the Governor-General having been pleased, on the 30th June last, to refer to me, for my opinion upon the same, a report of the Surveyor-General in the matter of the memorial of the Trinity Board of Montreal, praying that a survey may be made of the Beach of the River St. Lawrence, above and below the City of Montreal, reserved for Public use, with a view of preventing encroachments; I have the honor of stating that, owing to the want of certain documents stating the conditions of the original grant of the Island of Montreal to the predecessors of the Seminary, I have been under the necessity of postponing the investigation of the matter submitted to me.

Having, after considerable delay, succeeded in procuring copies of those documents, I have duly considered the subject, and I have now the honor of reporting the result of my inquiries for the information of His Excellency the Governor-General.

By the common law of France, as it existed at the earliest period, and by Royal Ordinances confirmatory of it, the public had the use of the banks and beach of navigable rivers, for the purposes of navigation; and the space so allotted for the public convenience consisted of from twenty-four to thirty feet along the margin of the rivers from the highest water-mark.

Beyond these principles introduced in this country, when colonized, there was no legislation on this subject here, until the 13th May, 1665, when, by an Ordinance of the Superior Council, it was enacted that all fences of the lands adjoining the St. Lawrence should be so placed as to leave a space of two roods (*perches*) between them and the highest tides (*les plus hautes marées*) as well for the passage of carts and cattle, as for the purposes of navigation.

This Ordinance is applicable to those parts only of the St. Lawrence where there are tide waters, and therefore the rights of the public in the beach and Banks of the River at Montreal would be governed by the rules of the common law, or by the provisions of the Royal Ordinances which were introduced into this country before the creation of the Superior Council, unless indeed some limitation or reservation, affecting

the private rights of the owners of the Island, were contained in the original grant of the property.

On reference to the primitive grants of the Island of Montreal by the *Compagnie de la Nouvelle France*, to the Sieur de Faucamp and others (17 December, 1640 and 21 April, 1650) the predecessors of the Seminary, (to which body, they made a donation of the property), they will be found to contain an ample reservation in favor of the Public in these terms.

"And to the end that this present conclusion may not be prejudiced "to the freedom of the navigation which shall be common to all the "inhabitants of New France, it is understood and intended by the said "Company that there shall be a Royal High road of twenty toises in "width all around the said Island, from the margin of the beach (*rive*) "to the conceded lands, and a like space on the River St. Lawrence "from its beach and margin to the conceded lands, the whole for the "convenience of navigation, and the communication (*passage*) carried "on by land (*passage qui se fait par terre*)."

I am not aware of any occurrence which has diminished the rights vested in the Public under the reservation in its favour made on these grants; and I am therefore led to believe that they continue unimpaired.

Under all the circumstances of the case I am humbly of opinion that the survey prayed for by the Trinity House, and recommended by the Surveyor-General for ascertaining and permanently settling the boundaries of the public rights, should be carried into effect.

I have the honour to be
Sir,
Your obt. servant.
A. BUCHANAN,
Queen's Counsel.

The Hon. D. Daly,
Sec., &c., Kingston.

LETTER OF A. BUCHANAN, Esq., Q.C., to Ths. PARKE, Esq., S.G.

Montreal, 30th October, 1843.

Sir,—Since I had the honour of reporting to Her Majesty's Government my opinion, respecting the rights of the public to the Beach and roads on the margin of the River St. Lawrence, in the Island of Montreal. The Reverend Messire Comte, Procurator of the Seminary of Montreal, the Seigniorial proprietors of the Island, has placed in my possession a copy of an unpublished Ordinance, or regulation bearing on the question, together with his observations on the subject.

I have the honour of enclosing these papers, and of requesting, in

consideration of the decree in which they may affect the general question, referred for my opinion during the absence of Mr. Attorney General Ogden, and the vacancy of the office of Solicitor General, that they may be submitted to the superior discretion and judgment of Her Majesty's Attorney and Solicitor-General for this part of the Province.

I have the honour to be
Sir,
Your obed't servant,
(Signed) A. BUCHANAN, Q.C.

P.S.—I had occasion to see Mr. Larue this morning, who had some intention of going to Kingston and taking this communication with him; but upon reflection he thinks it better to continue the survey, the weather being favourable, and no obstruction having been offered as yet to his operations.

(Signed) A. B

Thos. Parke, Esq.,
H. M. Surv.-Gen., Kingston.

OPINION OF F. A. QUESNEL, ESQ., Q. C.

Kingston, 11th February, 1844.

Sir,—In obedience to the commands of His Excellency the Governor-General, as expressed in your order of reference to me, of the 29th ult., requesting my opinion and report as to the extent of the breadth of the Island of Montreal, and the right of the public to a certain reserve of about twenty toises in breadth round the Island of Montreal to be used as a High Road, the said reference accompanied by the following document, viz: a report of the Surveyor-General, dated the 22nd June, 1842, on a memorial of the Trinity Board of Montreal; a report and opinion on the same subject by A. Buchanan, Esquire, Queen's Counsel, of the 29th November, of the same year; a second report of the same in explanation of the former one, dated the 30th Oct. last, a document containing the observation of Mr. Comte, Procurator of the Seminary of Montreal, relating to the said reserve of twenty toises around the city of Montreal; and lastly, the copy of an ordinance of Mr. Duchesneau, Intendant of Justice, Police and Finance, in Canada, of the 6th August, 1680, respecting the breadth of the public roads in the Country, and in the Island of Montreal in particular.

Having attentively examined the above document as well as those hereinafter cited, having a bearing on the question, I have the honor to state that the Island of Montreal was conceded not by the King of France, but by certain individuals under the name of the *Compagnie de la Nouvelle France*, the then proprietors of the whole of Canada, to the Sieur de Faucamp and others, a part in the year 1640, and the remain-

der a short time afterwards. That the first deed of concession contains the following reservation, and to the end that the present concession may not be prejudiced to the freedom of the navigation, which shall be common to all the inhabitants of New France, it is understood and intended by the said Company, that there shall be a Royal High-road of twenty toises in width, all around the said Island, from the margin of the beach to the lands to be (thereafter) conceded, the whole for the convenience of navigation, and as a passage or communication by land.

On the 5th June, 1663, the said Island of Montreal was, by deed of donation, from the said Sieur de Faucamp and others, transferred to the Seminary of *Saint Sulpice de Paris*, without any clause or condition of the above named reservation for a Royal Highway, being therein made; which deed of donation was confirmed by the King of France in May, 1667.

In the month of March, in the said year, 1663, the King re-united to his Crown, all the territory called New France, and at the same time created a Sovereign Tribunal under the name of "*Le Conseil Superieur de Quebec*," with a jurisdiction extending over the whole country, and to which he delegated the power of administering justice according to the Laws and usages then existing in France, with the power of making new Laws, as well for the Police, as for the public and private affairs of the Country, His Majesty reserving to himself the right of altering of abrogating the same, and substituting others therefor whenever the benefits of his subjects should render such a proceeding necessary.

It is from the period when the Common Law of France was introduced into Canada, and of the passing of the Local Laws especially affecting Canada, by the said Council or other competent authority, that the legal effect and existence of the above mentioned reservation for a Royal Highway must be considered, so far as the public interest may be concerned therein or affected thereby.

In France the locality and width of all public roads were determined by Law, and to prevent a future encroachment, the boundaries of the same were all defined. Such is also the Law in Canada. The reservation in question, however, that is to say, the space of twenty toises from the river to the lands to be conceded was never defined by actual boundaries nor have they, up to this day, been taken possession of for public use by any competent authority, although upwards of two hundred years have elapsed since the concession of the Island of Montreal.

The reason why this pretended right of the public to the twenty toises from the beach to the conceded lands was not followed up by public authorities is obvious. Our knowledge of the beach and the shore of the Island of Montreal is sufficient evidence that a road of that nature was in many parts impracticable, and in fact, and by no means advantageous to the public, because: 1st, In many places the shores being indented, circuitous and irregular, the high-road instead of being as

short and straight as circumstances would admit, must have followed all the windings of the River to the great inconvenience of travellers.

2nd, Because, although the shores might consist of low lands unfit for a public road, still, according to the letter of the reservation clauses, the twenty toises should have been measured on this low land, the consequence of which would be that the public road in certain seasons of the year would be impassible. Of this we have a striking instance which will be found consigned in an ordinance of Mr. Duchesneau, as Intendent of Canada, of the 6th August, 1680. The road leading from the City of Montreal to the River Saint Pierre, instead of following the winding and the beach of the River Saint Lawrence had been, as it appears, fixed on high ground, and in a straight line. The inhabitants of the River Saint Pierre having to suit their own convenience, either aken possession of the road or discontinued to keep it in repair, and traced a new road on the beach, the Intendant on a complaint made to him on the subject, ordered that the road should be made in a proper place, and directed its width to be thirty-six feet, that being the usual width of all front roads on the Island of Montreal.

I am therefore of opinion that by inserting in the deed of concession of the Island of Montreal, the clause reserving the twenty toises aforesaid, the conceders could mean nothing else than that the public should have the use of the beach and of a road around the Island of Montreal so far as practicable, and always subordinate to the authority of the existing or future Laws.

The Seminary of Saint Sulpice, having by deed of donation as aforesaid, become proprietors of the Island of Montreal, in the year 1663, and the King having confirmed their title by His Royal Letters Patent, without imposing on them any conditions than those mentioned in the said deed of donation, they had a right to concede the lands on the Island according to the laws and usages of the Country. In lower Canada the lands fronting navigable rivers ha been generally conceded to the water edge, always reserving the beach, which, by common Law belongs to the public, and subject to the sufferance of roads established by Law. In their deeds of concession the Seigniors of Montreal have complied with the Law in this respect, and have only exercised such rights as clearly belong to them in common with other Seigniors of the Country.

All the Public Roads in the Island of Montreal have been established by competent authority, either before or since the conquest. Their usual width (as was the case in France with regard to High-ways leading from one Town to another) has been two perches or thirty six feet, as may be seen by an Ordinance of the *Conseil Superieur* of the 13th May, 1665, and the above cited *Ordonnance* of the Intendant, Duchesneau, of the 6th August, 1680, and that width was on some occasions, reduced to twenty four feet, as appears by a *Réglement de Police* of the same, dated the 1st of February, 1706.

Since the Conquest the same provisions with regard to the width of front Roads or Public Highways have been maintained, as may be seen by the Ordinance passed by the Governor and Legislative Council of Quebec, of the 17, Geo. III c. 11, and by the subsequent statute of the Provincial Parliament of the 36, Geo. III c. 9.

Should it be thought advisable in the present circumstances of the Country, to alter or enlarge the old roads, the power to do so is now vested in the Municipal Authorities of recent creation, and can be exercised on the usual conditions of indemnifying parties by whom damage may be suffered.

I am therefore of opinion that inasmuch as the aforesaid reservation of twenty toises to be measured from the water edge to the conceded land was vague in its nature, impracticable in its effects, not imposed upon the Seminary of Saint Sulpice as a condition of the deed of donation, sanctioned by the King of France; and further inasmuch as the said reservation was never claimed or legally accepted by any competent authority nor so defined as to permit a legal profession thereof: and, finally, inasmuch as in all cases, the reasonable intention of the first author of that reservation has been carried into effect as regards the public who have the free use of the beach as the Law directs, and also of a public road since established by the Law, and now existing around the Island of Montreal, the aforesaid reservation is now a nullity, and as a consequence no encroachment in respect of the same, can be attributed to the Proprietors of lands bordering on the River Saint Lawrence, where possession, during two hundred years is sanctioned by the authority of the Law, and who can never be disturbed under the alleged existence of the above mentioned reservation.

With regard to the beach in general, I have already stated that all obstructions thereto can be removed on the request of any interested party or of any public officer, and as regards the beach at the Port of Montreal, I beg to state that all the lots and emplacements situated on the south-east side of Saint Paul's Street, having been conceded by the Seigniors of Montreal, as appears by an Ordinance of the 28th July, 1706, condemning the proprietors of the said lots to pay the rents thereof to the said Seigniors, according to their deeds, it is a matter of no difficulty to ascertain such encroachments as may have been made on the public property; but I have every reason to believe that deducting the depths of the lots so conceded and the extent of the ground reserved by the Government for the fortification of Montreal, facing the side of the river, it will be apparent that no encroachments have taken place, and that the reservation of twenty toises was never carried into effect, even in the Port of Montreal, where its necessity was most obvious, and where a large space of the ground was required.

I have the honor to be, Sir,

Your obt. Servant,

F. A. QUESNEL, Q.C.

L. H. LAFONTAINE'S OPINION,

(With appendices, on the question of Harbour Beach Lots.)

Montreal, 7th May, 1852.

SIR,—I have attentively considered the question submitted to me by the Harbour Commissioners, relative to the encroachments referred to in their letter of the 13th November last.

The principal point to be examined and reported upon, is the clause or condition attached to the original grant of the Island of Montreal, by "*La Compagnie de la Nouvelle France*," having for its object the reservation, for a public road, of twenty toises from the margin of the beach all around the said Island. Has such a clause been at any time carried into effect; and if not can it be so now?

I have procured copy of two legal opinions given upon that very question at the instance of the Government, one by the late Alexander Buchanan, Esquire, Q. C. in 1842, and the other by the Hon. Mr. Quesnel, Q. C. in 1844; also a memorandum made by the Reverend Mr. Comte, Procurator of the Seminary of Montreal, and transmitted to the Government by Mr. Buchanan, to whom it had been delivered by Mr. Comte.

I enclose copies of those documents for the information of the Harbour Commissioners, and as serving to explain the grounds upon which I have formed my own conclusions.

Mr. Buchanan has arrived at the conclusion that the reservation in question is in full force, and that he was not aware of any occurrence which had diminished the rights vested in the public under it. But it is to be observed that when he made his report, he had not yet been furnished with the statement of facts and observations of Mr. Comte, nor with a certain unpublished Ordinance of 6th August, 1680. This is stated in a letter of the 30th October, 1843, addressed by Mr. Buchanan to the then Surveyor-General, Thos. Parke, Esquire. I also enclose copies of these documents.

The Commissioners will see that Mr. Quesnel has entered fully into the merits of the question and made an elaborate and well argued report upon it. His opinion is that, in the circumstances of the case, the reservation in question has had no effect, and that no rights can be claimed by the public under it.

After mature consideration of the subject, I am led to concur in the conclusions arrived at by Mr. Quesnel; I am however prepared to admit that this is a question upon which doubts may be reasonably entertained. Under the circumstances, and owing to the importance of having a road along side that portion of the harbour of Montreal, which is referred to in the Plan transmitted to me by the Commissioners, it may be well

for the Government to consider the subject, with a view to its being submitted for legal decision by a proper tribunal.

I am of opinion that any judicial proceedings to be adopted for the removal of the encroachments complained of, whether confined to those made on the beach properly so called, or extended to those existing upon the reservation in question, can only be adopted in the name of the Crown, and not by the Montreal Trinity House, and still less by the Harbour Commissioners.

In order to form my opinion on the latter point, I have been obliged to examine the several statutes, as well those which have been repealed as those which are in force, concerning the respective powers of the Trinity House and the Harbour Commissioners. From these statutes, I have made copious extracts, accompanied with observations of my own, which I deem it my duty, in consequence of verbal instructions from the Commissioners, to send to them. Although they may appear rather long and tedious, yet they may prove very useful, first in showing the confusion which exists as to the nature and extent of the respective powers of the several parties concerned, and the conflict of authority which it may lead to, and secondly in aiding the person who may be charged with preparing a new measure with the view either of consolidating the laws relating to the subject, or of well defining the powers and authority of the parties above mentioned.

The necessity of clearly defining these powers must be apparent to any one who is obliged to read the statutes relating to the matter.

Before concluding, I beg to apologize for having delayed so long making my report.

I have the honor to be,

Sir,

Your most obt. Serv't,

L. H. LAFONTAINE,

Advocate.

J. GLASS, Esq.,

Secretary, &c., &c.